

ITEM: 11

SUBJECT: Resolution Directing Executive Officer to Issue Time Schedule Orders in Appropriate Cases

BOARD ACTION: *Adoption of Resolution Providing Direction Regarding Issuance of Time Schedule Orders*

BACKGROUND: Mandatory minimum penalties apply to serious or chronic violations of numeric effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits. However, an exception applies if, among other things, the effluent limitations in question are new or more stringent than in previous permits, and the discharger is subject to a time schedule order (TSO) or cease and desist order (CDO) that requires compliance as soon as possible, but within five years.

The Policy for Implementation of Toxics Standards for Surface Waters, Enclosed Bays, and Estuaries of California (SIP) and the Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits (Resolution 2008-0025) allowed compliance schedules that delayed the effective date of final effluent limitations under the California Toxics Rule (CTR) until 18 May 2010 in certain cases. Staff has not yet determined how many of these dischargers should be subject to TSOs but is concerned that a larger-than-usual volume of such orders will unnecessarily increase the workload of staff and the Board itself if all orders are placed on Board agendas.

The proposed resolution directs the Executive Officer to issue TSOs in appropriate cases, where a hearing before the Board is not necessary. A 30-day notice and comment period would still apply, as required by the Water Code.

In cases where a TSO or CDO will be issued concurrently with a renewed NPDES permit, staff will continue the current practice of placing both items together on the Board's agenda.

ISSUES: The Central Valley Water Board has already delegated to the Executive Officer all delegable duties, including the issuance of TSOs. However, staff requests the Board to consider this situation explicitly for two reasons. First, the TSOs in question have the effect of shielding dischargers from mandatory penalties. The Board itself may therefore prefer to hear all such orders. Second, TSOs are sometimes perceived as changing or extending provisions in NPDES permits that the Board itself has issued. This is incorrect, but a TSO represents the Board's view of actions that are necessary and appropriate to attain compliance and might therefore impact future

discretionary enforcement.

The Board may add conditions regarding when a TSO should be issued by the Executive Officer and when the Board should issue them.

Issuance or modification of CDOs cannot be delegated. Board action will be required for dischargers with an existing CDO that requires modification or where a CDO is more appropriate.

RECOMMENDATION: Adopt the proposed resolution.

Mgmt. Review_____

Legal Review_____ *LLO*

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11020 Suncenter Drive, Suite 200

Rancho Cordova, CA 95670